



Office of the Attorney General
State of Texas

December 8, 1997

DAN MORALES
ATTORNEY GENERAL

Mr. John Riley
Director, Litigation Support Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR97-2669

Dear Mr. Riley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110697.

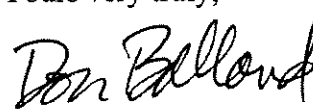
The Texas Natural Resource Conservation Commission (the "commission") received a request for "the compliance history of the above referenced Inland Products facility [in Kilgore, Texas], which may include permits, notices of violation, inspections, etc." You indicate that you will release some of the requested information. You seek to withhold identifying information that was generated as a result of a complaint to the commission, including several portions of the documents which include information that is not responsive to this request. You have marked this non-responsive information in blue highlighting. You are not required to release the blue highlighted information as it is not responsive to the request for information: this information relates to other facilities. Of the responsive information, you specifically seek to withhold any information that would identify any person who complained to the commission about the Inland Products facility, *e.g.* names, addresses, and phone numbers. You have marked this information in yellow highlighting. You assert that the identifying information is excepted from required public disclosure under section 552.101 of the Government Code because it is confidential informant information. We have considered the exception you claim and have reviewed the information at issue.

The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having

a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5. Where statements evidence no wrongdoing or violation of law, they are not protected by the informer’s privilege. Open Records Decision No. 549 (1990); *see also* Open Records Decision No. 515 (1988) (where letters do not describe conduct which is clearly criminal, they are not excepted by the informer’s privilege). You have not explained or demonstrated how or why the marked communications and information in the submitted documents relate to violations of a criminal or civil statute. Therefore, the commission may not withhold the yellow highlighted information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, flowing style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 110697

Enclosures: Submitted documents

cc: TechLaw, Inc.
Attn: Kristina Blackmore
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Chantilly, Virginia 20151
(w/o enclosures)